

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

<b>XO Illinois, Inc.</b>	:	
	:	
<b>Application for Extension of Waiver</b>	:	<b>01-0520</b>
<b>of 911 Call Box Requirement under</b>	:	
<b>83 Ill. Admin. Code Section</b>	:	
<b>725.500(o) and 725.620(b).</b>	:	

**ORDER**

By the Commission:

On July 27, 2001, XO Illinois, Inc. ("XO"), formerly known as NEXTLINK Illinois, Inc. ("NEXTLINK"), filed an application with the Illinois Commerce Commission ("Commission") seeking a third one-year extension of a one-year waiver it received concerning the requirements of Sections 725.500(o) and 725.620(b) of Ill. Adm. Code Part 725. In general, these rules require the placement of call boxes outside of a telephone company's central office. The purpose of the call box is to enable the local public safety answer point ("PSAP") located in the area served by the central office to use the call box to receive 9-1-1 calls if the central office is unable to complete calls to the PSAP.

On July 8, 1998 in Docket No. 98-0161, the Commission found that it was technologically infeasible for NEXTLINK to comply with Sections 725.500(o) and 725.620(b) and granted NEXTLINK a one-year waiver from complying with these sections in accordance with Section 725.101. The Commission granted a one-year extension of the waiver on July 8, 1999 in Docket No. 99-0301. On September 7, 2000, in Docket No. 00-0492, the Commission granted a second one-year extension of the waiver. The Commission's September 7, 2000 order stated that NEXTLINK may request a third extension of the waiver if necessary. A copy of the order entered in Docket No. 00-0492 is attached to the application and marked as XO Exhibit 1.0. The prepared testimony and accompanying affidavit of Mr. Frank Johnson, XO's Operations Manager, are also attached to the application and marked as XO Exhibit 2.0.

On August 14, 2001, Commission Staff ("Staff") filed an answer responding to the application. As set forth more fully below, Staff recommends granting the requested extension of the waiver. Staff also supports waiving the hearing in this docket. In light of the information contained in the application, the testimony of Mr. Johnson, and Staff's answer, the Administrative Law Judge determined that no hearing was necessary. No petitions for leave to intervene were filed in this docket.

Mr. Johnson essentially testifies that XO's situation has not changed since it received its first one-year waiver from Sections 725.500(o) and 725.620(b). As discussed in Docket Nos. 98-0161, 99-0301, and 00-0492, as a competitive local exchange carrier ("LEC"), XO's network configuration is not compatible with the call box requirements contained in Part 725. XO operates two switches in Illinois but provides service to customers covered by multiple PSAPs. In the event of an outage between XO's central office and the PSAPs, multiple PSAPs would be attempting to answer calls on a single call box. Moreover, as explained in the three prior waiver dockets, if one of the PSAPs connected to XO's switch activates the call box, 9-1-1 calls to all of the PSAPs would be routed to the call box. Staff stated that no technological solution to this problem exists. Incumbent LECs are not troubled with these problems since they have multiple switch locations that correspond geographically to PSAPs, according to Mr. Johnson.

To compensate for the absence of a call box, Mr. Johnson states that XO utilizes diverse routing. In other words, XO has established two separate call paths for 9-1-1 traffic from its switches to the appropriate central office of the incumbent LEC, which then delivers the 9-1-1 traffic to the appropriate PSAP. In the event that an outage occurs in one path, calls are automatically routed over the intact path. Further, Mr. Johnson testifies that XO maintains around the clock on-call personnel as well as an emergency generator and battery back up power at its switch location to provide power should a commercial power failure occur. Mr. Johnson added that to his knowledge, the lack of a call box has not caused any problems with XO's provision of 9-1-1 service or with routing calls to PSAPs.

Because XO employs one of the most technically advanced switches available, Mr. Johnson maintains that the probability of XO's switch being isolated is quite low. Should XO's switches become isolated, however, Mr. Johnson testifies that XO has adopted and will continue to follow a system under which XO will use its best efforts to notify the primary point of contact within each 9-1-1 system affected within 15 minutes of a confirmed outage in compliance with Section 725.500(p). Adopting practices to provide such notice was made a condition to receipt of the waiver in Docket Nos. 98-0161, 99-0301, and 00-0492.

Another condition imposed by the Commission in the prior waiver dockets required XO to notify all then-existing and future 9-1-1 systems within XO's service area that XO had received a waiver from complying with Sections 725.500(o) and 725.620(b). Mr. Johnson states that XO is willing to accept the same condition concerning the requested extension. The Commission also required XO to provide to the Commission's 9-1-1 Program Director copies of the notification sent to the 9-1-1 systems.

In its answer, Staff recommends that XO's application for a one-year extension of the waiver from Sections 725.500(o) and 725.620(b) be granted. Staff adds, however, that the Commission should require XO to provide written notification to all

current and future 9-1-1 systems that XO is providing local exchange service in those 9-1-1 systems' areas and explain that XO will not be providing a call box pursuant to a one-year waiver granted by the Commission. Furthermore, Staff believes that XO should be required to ensure that a minimum of two facility paths between its central office and the 9-1-1 selective router be provided, each with a minimum of two 9-1-1 trunks. Staff also suggests that the Commission require XO to maintain its policy of notifying a primary point of contact within a 9-1-1 system within 15 minutes after a confirmed outage. Finally, Staff recommends that the Commission require XO to agree to abide by any revisions to Part 725. Each of these conditions also appeared in the Commission's order in Docket No. 00-0492. The Commission finds Staff's suggestions appropriate in this matter.

XO requests the one-year extension of its waiver from Sections 725.500(o) and 725.620(b) under Section 725.101. Section 725.101 provides:

- a) A public agency or a telecommunications carrier may file a petition pursuant to Ill. Adm. Code 200 for a temporary waiver from compliance with the requirements of Sections . . . 725.500 . . . (o), [and] 725.620(b) . . . if the petitioner alleges that compliance with the provision is either technologically infeasible or that it is financially incapable of complying with the requirement. In determining whether to grant a waiver from a specified requirement, the Commission shall consider the economic impact of compliance, costs and rate consequences (if applicable), and the effect of the waiver on the provision of emergency services.
- b) If granted, such waiver will be effective for a period of up to one year from the date of the order granting the waiver. A party seeking an extension of the waiver period must file a separate petition with the Commission. Any extension of the waiver period shall be for no longer than one year. A party may file for and be granted more than one waiver and more than one extension of the waiver period.

### 83 Ill. Admin. Code Section 725.101.

From the record it appears that XO's request for a one-year extension of its waiver from complying with Sections 725.500(o) and 725.620(b) of the Commission's rules should be granted. For the reasons set forth in the application, Mr. Johnson's testimony, and Staff's answer, the Commission finds that it continues to be technologically infeasible for XO to comply with the provisions of these sections. The Commission also notes that Staff is in the process of proposing revisions to Part 725 to address the issue at hand. The type of diverse routing utilized by XO is among the options being contemplated in the revisions. Staff and the industry should continue to work on a resolution to the problems described in the record. To ensure public safety,

the Commission also finds that the conditions recommended by Staff and imposed in Docket No. 00-0492 should be imposed in this proceeding as well.

The Commission, being fully advised in the premises, is of the opinion and finds that:

- (1) XO is a corporation duly authorized to do business in the State of Illinois and has received authority from the Commission to provide local exchange and interexchange services;
- (2) the Commission has jurisdiction over the parties and over the subject matter of this proceeding;
- (3) the recitals set forth in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact;
- (4) it is technologically infeasible for XO to comply with the provisions of Section 725.500(o) and Section 725.620(b) of the Commission's rules;
- (5) XO should receive a one-year extension, from the date of this Order, of its waiver from complying with Sections 725.500(o) and 725.620(b) under Section 725.101;
- (6) XO should be required to inform in writing, within 30 days of the date of this Order, those 9-1-1 systems in whose areas it provides service that XO is providing service in their respective areas and that XO will not be providing a call box at its switches in Illinois pursuant to a one-year extension of the waiver previously granted by the Commission;
- (7) upon completing the notification described in Finding (6), XO should provide to the Commission's 9-1-1 Program Director a copy of the written notification sent and a list of all those 9-1-1 systems who received the written notification;
- (8) XO should maintain its practices enabling it to notify within 15 minutes after a confirmed outage the primary point of contact of any isolated 9-1-1 system pursuant to 83 Ill. Adm. Code 725.500(p);
- (9) XO should always ensure that a minimum of two facility paths between its central office and the 9-1-1 selective router be provided, each with a minimum of two 9-1-1 trunks;
- (10) any revisions to Part 725 that become effective within one year from the date this Order is entered should supersede the waiver granted in this Order; and

- (11) XO may request a fourth extension of the waiver from Sections 725.500(o) and 725.620(b) if the aforementioned revisions to Part 725 are not completed within one year of this Order being entered.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that XO Illinois, Inc. is hereby granted an extension of the waiver received in Docket No. 00-0492 from complying with the requirements of Section 725.500(o) and Section 725.620(b) of the Commission rules. This extension of the waiver shall be in force for one year from the date this Order is entered.

IT IS FURTHER ORDERED that XO Illinois, Inc. shall notify in writing those 9-1-1 systems in whose areas it provides service as described in finding (6).

IT IS FURTHER ORDERED that XO Illinois, Inc. shall notify the Commission's 9-1-1 Program Director as described in Finding (7).

IT IS FURTHER ORDERED that XO Illinois, Inc. shall maintain its system for notifying, within 15 minutes after a confirmed outage, the primary point of contact of any isolated 9-1-1 system pursuant to 83 Ill. Adm. Code 725.500(p).

IT IS FURTHER ORDERED that XO Illinois, Inc. shall always ensure that a minimum of two facility paths between its central office and the 9-1-1 selective router be provided, each with a minimum of two 9-1-1 trunks.

IT IS FURTHER ORDERED that any revisions to Part 725 that become effective within one year from the date this Order is entered shall supersede the waiver granted in this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 21<sup>st</sup> day of August, 2001.

Chairman